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Before The  
**Federal Communications Commission**  
Washington, D.C. 20554

In The Matter Of

MARTHA J. HUBER, *et al.*,

For Construction Permit for a  
New FM Station on Channel 234A  
in New Albany, Indiana

)  
)  
) MM Docket No.  
) 93-51  
)  
)

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

TO: The Honorable Richard L. Sippel  
Administrative Law Judge

## Opposition To Petition To Enlarge Issues

Rita Reyna Brent respectfully opposes the Petition to Enlarge Issues filed May 17, 1993, by Martha J. Huber. The petition requests the addition of financial and financial certification issues against Huber. As Brent shows below, there is no basis whatsoever for adding the issues.

1. Huber avers that Brent is not financially qualified and falsely certified her financial qualifications, alleging that Brent did not at the time have the documentation required by the Instructions to FCC Form 301.<sup>1</sup> Huber's claim rests on a nine-word sentence fragment in a pleading filed by Brent's counsel during the document production phase of this proceeding.<sup>2</sup> What Huber contends is the "unambiguous meaning" of counsel's statement is instead an irrational misinterpretation. Neither

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<sup>1</sup> According to paragraph D.(3)(a) of the Form 301 Instructions proffered by Huber, a self-financing applicant such as Brent must have on hand at certification a current balance sheet and net income data for the two years preceding submission of the application.

<sup>2</sup> The pleading is Brent's April 27, 1993, Partial Opposition to Huber's April 16, 1993, motion to compel.

Brent nor her counsel has made any statement regarding the existence of any "Form 301" documents.

2. In document production, Huber sought to compel Brent to produce "financing documents." Brent responded at Paragraph 2 of her *Partial Opposition* that "she does not have any financing documents." Huber then urged that Brent be compelled to produce financial-type documents such as her balance sheet. The Presiding Judge ruled that such documents are not subject to production under Section 1.325(c)(1)(v).<sup>3</sup>

3. Huber now presses enlargement on the ground that Brent admitted in her *Partial Opposition* she lacked the kinds of financial documents specified by the Instructions to FCC Form 301, at the time she prepared and certified her application. Huber's "evidence" is a sentence fragment introducing Paragraph 3 of Brent's pleading, which Huber wrenches out of context and reinterprets to her own advantage.<sup>4</sup>

4. Huber contends the phrase that introduces Paragraph 3 ("Although Brent is not holding documents not previously produced,") is an "admission" by counsel that Brent did not have in hand the documents necessary to certify her financial qualifications on Form 301.<sup>5</sup>

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<sup>3</sup> *Memorandum Opinion and Order*, FCC 93M-231, released May 7, 1993.

<sup>4</sup> Paragraph 3, in its entirety, contains the legal argument that standard document production does not require an applicant to produce the documents necessary to certify Form 301.

<sup>5</sup> Of course, an unverified pleading does not constitute proof of the facts alleged, 32A C.J.S. §772, at 89.

5. Huber is wrong. The quoted dependent clause in Paragraph 3 is simply a transition phrase which reiterates the denial contained in the preceding paragraph concerning "financing documents," and introduces Brent's legal argument as to why "Form 301" documents are not required to be produced.<sup>6</sup> Taken in their entirety, Paragraphs 1-3 of Brent's *Partial Opposition* cannot possibly leave any doubt that Brent was resisting Huber's entirely unsupported claim that Brent was required to produce "Form 301" documents.

6. In contrast to the "spin" that Huber puts on counsel's statements, Brent unequivocally states in the attached Declaration that at the time she prepared and certified her application, she had on hand the required documentation relating to her financial ability.

7. *Astroline Communications Limited Partnership v. FCC*, 857 F.2d 1556, 1561-62 (D.C. Cir. 1988), articulates the standard for designating a hearing issue. A substantial and material question must be presented by the petitioner. In the present case petitioner Huber was required to raise a substantial and material question whether, in November 1991, Brent followed the Form 301 Instructions. However, Huber's plea for additional issues rests exclusively upon her wholly erroneous and unfounded premise of an "admission" by counsel that was never made. As such, the question presented by Huber is not substantial and material, and a trial-type hearing is not necessary to resolve it.

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<sup>6</sup> If, as Huber alleges, Brent's counsel intended to *admit* that Brent "did not have" (Pet. at 5) Form 301 documents, then he would not have postulated the argument in Paragraph 3, that they are not required to be produced. The argument presumes their existence.

Finally, if any doubt exists regarding what Brent's counsel meant, such has been dispelled by Brent's Declaration.

WHEREFORE, THE PREMISES CONSIDERED, It is respectfully

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DECLARATION OF RITA REYNA BRENT

I, Rita Reyna Brent, do hereby declare as follows:

I have read the Petition to Enlarge Issues dated May 17, 1993, that was filed against my application by Martha J. Huber.

Ms. Huber claims that my attorney said I did not have on hand at the time I filed my application the documents required to be on hand by the instructions to FCC Form 301. Regardless, what Ms. Huber thinks my attorney said, a claim

**CERTIFICATE OF SERVICE**

I, Dinah L. Hood, a secretary in the law firm of Haley, Bader & Potts, hereby certify that a copy of the foregoing **"Opposition To Petition To Enlarge Issues"** was mailed, postage pre-paid, this 2nd day of June, 1993 to the following:


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\* Hand Delivered